IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1630 OF 2005

Parmanand Hansraj Thakkar ...Applicant

vs.

Nandkumar Tulshiram Naik & Anr. ...Respondents

Ms Pranali Kakade for the Applicant
Mr.A.S.Gadkari,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 3,2005

P.C.:

1. On 23rd March 2005 this Court issued notice to the Respondent no.2. On 26th July 2005 the Advocates were put to notice that this Application will be decided finally.

2. The challenge in this Application is to the order dated 14th February 2005 passed by the learned Joint District Judge by which the Application for transfer made by the Applicant was rejected. The learned Joint District Judge, Pune observed that the Applicant and his Advocate were absent on various dates and therefore the Applicant was not interested in prosecuting the Application for transfer.

3. The Application made by the Applicant was for transfer of a complaint under Section 138 of the Negotiable Instruments Act, 1881. After the Application for transfer was made, the Sessions Court called for the record of the complaint and that is how the complaint could not proceed further.

4. The learned Advocate for the Applicant submitted that on merits the Applicant has a good case for seeking transfer. She submitted that the Advocate for the Applicant did not remain present and therefore the Application was dismissed for default. The learned Advocate for Respondent No.1 pointed out that the Application for transfer is nothing but an attempt to delay the decision of the complaint. He pointed out that the Application for transfer was made after recording of the evidence only with the object of delaying the decision. He pointed out that there is no ground available for transfer of the case. He submitted that there is no explanation whatsoever for the absence of the Advocate appearing for the Applicant before the learned Joint District Judge on four consecutive dates. He submitted that no indulgence should be shown to the Applicant.

5. I have considered the submissions. Impugned order discloses that on 28th January 2005, 29th January 2005 and 31st January 2005 the Applicant and his Advocate were absent. Even on the date of passing the impugned order, the Applicant's Advocate was absent. Once the Applicant engaged the services of an Advocate he was not expected to remain present on each and every date fixed before the learned Joint District Judge, Pune unless there was a specific direction issued to that effect. It is pertinent to note that in the Petition there is no explanation whatsoever as to why the

Advocate appointed by the Applicant was absent. One of the courses which is open is to permit the Applicant to apply for restoration before the same Court. If the said course is adopted, it will further prolong the hearing of the complaint which is awaiting Judgment. Since the Sessions court entertained the Application for transfer by calling for record of the complaint, the Applicant deserves to be given one chance to prosecute the Application for transfer on merits. As there is no explanation forthcoming for the absence from the Advocate for the Applicant, the Respondent No.1 deserves to be compensated by ordering payment of heavy costs. Considering the stage at which the Application for transfer was made and considering the conduct of the Applicant, the amount of costs is quantified at Rs.15,000/- which will be a condition precedent.

6. Hence, I pass the following order :

i) Impugned order dated 14th February 2005 is quashed and set aside and Criminal Application No.168 of 2004 is restored to the file of learned Joint District Judge, Pune subject to condition of the Applicant depositing a sum of Rs.15,000/- by way of costs in the District Court, Pune on or before 17th August 2005. If the amount of costs is deposited by the Applicant within the stipulated period, the parties will appear before the learned Joint District Judge, Pune on 22nd August 2005 for fixing the date of hearing of the transfer

application.

ii) The learned Joint District Judge will take up the transfer application on priority basis and the same shall be disposed of on or before 30th September 2005. It is made clear that no adjournment shall be granted to the Applicant except on exceptional and genuine grounds.

iii) On the failure of the Applicant to deposit the amount of costs within the stipulated period, the impugned order dated 14th February 2005 will stand confirmed.

iv) If the amount of costs is deposited by the Applicant, Respondent No.1 will be entitled to withdraw the same.

v) All contentions on merits of the transfer Application are expressly kept open.

vi) Application is disposed of in above terms.

. Parties to act upon an authenticated copy of this order.

JUDGE